

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MILTON RICH,

Plaintiff,

v.

SEATTLE POLICE DEPARTMENT, *et al.*,

Defendants.

Case No. 2:13-CV-01251-MJP-BAT

**REPORT AND  
RECOMMENDATION**

On July 16, 2013, plaintiff Milton Rich applied to proceed *in forma pauperis* with a proposed 42 U.S.C. § 1983 action, alleging that on November 24, 2012, Seattle Police Department Officers S. Mulloy, Nam Nguyen, and Landon Steiger unconstitutionally used excessive force while arresting him. Dkt. 1-1, at 6 (hereinafter “July 16, 2013 Action”).<sup>1</sup> This action involves the same police officers on the same date and the same allegedly improper conduct as plaintiff’s case C13-1147-RSM-BAT (W.D. Wash., filed July 2, 2013) (hereinafter “July 2, 2013 Action”). The only discernible differences between the **July 16, 2013 Action** and the **July 2, 2013 Action** are: (1) the July 16, 2013 Action makes less detailed and more conclusory factual allegations than does the July 2, 2013 Action;<sup>2</sup> (2) the July 16, 2013 adds as

<sup>1</sup> The Court presumes that the “two unknown officers” referred to in the complaint’s factual allegations are defendants Nguyen and Steiger. *See* Dkt. 1-1, at 6.

<sup>2</sup> In the July 16, 2013 Action, plaintiff’s allegations are contained in a single paragraph. Dkt. 1-

1 defendants Seattle Police Department, former Seattle Police Chief John Diaz, present Seattle  
 2 Police Chief Pugel, and Kathryn Olsen, the Director of the Office of Professional Accountability;  
 3 and (3) the July 16, 2013 Action contains two new attachments (Dkt. 1-1, at 12–15) but omits six  
 4 of the seven attachments from the July 2, 2013 Action. Both of these actions have been referred  
 5 to the undersigned magistrate judge.

6 The Court recommends **DISMISSING** the present action without prejudice and  
 7 **DENYING** the IFP application (Dkt. 1) as moot because case involves the same culpable  
 8 conduct on the same date by the same parties as the action filed two weeks prior. Plaintiff  
 9 should move to amend his complaint in the July 2, 2013 Action—which has been served but not  
 10 answered—if he seeks to add the non-overlapping defendants or to add additional  
 11 information/exhibits. The Court notes, however, that in the current action plaintiff has made no  
 12 allegations whatsoever that defendants Seattle Police Department, Diaz, Pugel, or Olsen were  
 13 personally involved in the allegedly unconstitutional use of excessive force, or that city policy or  
 14 custom led to the alleged use of excessive force on November 24, 2012. *See* Dkt. 1-1, at 6.

15 Any objections to this Recommendation must be filed no later than **August 8, 2013**. The  
 16 Clerk should note the matter for **August 9, 2013**, as ready for the District Judge’s consideration.  
 17 Objections shall not exceed five (5) pages. The failure to timely object may affect the right to  
 18 appeal.

19 DATED this 18th day of July, 2013.

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21 BRIAN A. TSUCHIDA  
 22 United States Magistrate Judge

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 1, at 6. In the July 2, 2013 Action, the allegations span eight pages and refer to specific  
 statements in the attachments. July 2, 2013 Action, Dkt. 5, at 3–10.